

PLANNING COMMISSION MINUTES
November 18, 2008
7:00 P. M.

Present: Chairman Clark Jenkins, Vice Chairman Tom Smith, Dave Badham, Michael Allen, Barbara Holt, Ray Keller, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen, Youth Council Representative Bryn Sieverts, and Recording Secretary Connie Feil.

Excused: City Council Representative Beth Holbrook.

Clark Jenkins welcomed all those present.

Tom Smith made a motion to approve the minutes for October 21, 2008 as written. Barbara Holt seconded the motion and voting was unanimous in favor.

1. Consider a re-application after denial for a Conditional Use Permit to allow for a home occupation as a contractor located at 1051 Canyon Crest Dr., Mike Favatella, applicant.

Mike Favatella, applicant, was present. Russell Mahan explained to the Planning Commission that the purpose of this consideration is whether “there has been a substantial change in the circumstances or sufficient new evidence as submitted by the applicant in writing since the denial of the previous application to merit consideration of a second application.” It is not for the purpose of considering whether to grant a conditional use permit.

Mr. Jensen presented a slide presentation comparing any changes made to the property from August 2006 to present. He stated that the only changes that Mr. Favatella has made are planting some trees and installing a fence. These changes enhance the property but are not related to a conditional use permit to operate a home business.

Mr. Jensen’s stated that the City Council, on August 12th, 2008, adopted “Council Findings of Fact and Conclusions of Law” pertaining to the denial of Mr. Favatella’s request for a conditional use permit. In this document, the Council listed nine findings of fact, which were the primary basis for the decision to deny the conditional use permit. Staff has reviewed those nine findings and compared them with Mr. Favatella’s letter of October 26, 2008. Staff’s opinion is that there has been no substantial change since the Council made its findings.

First, Mr. Favatella continues to demonstrate the same attitude of defiant noncompliance that was found by the City Council. In its Conclusion the Council stated,

5. The reasonably anticipated detrimental effects of this proposed conditional use cannot be substantially mitigated by the imposition of reasonable conditions *because*

Mr. Favatella has demonstrated by his actions over the past years that he will not follow ordinances or conditions, even when specifically promised in writing.

This continuing attitude is demonstrated by the fact that he still does not comply with his written promises of August 2, 2006, nor with the conditions he certified on June 2, 2008, stating that he would abide by the provisions of his application for a home occupation license, nor with the conditions of approval of the Administrative Committee on June 16, 2008. His letters to the City dated September 29 and October 26, 2008, are full of accusations against his neighbors and the Mayor, but are notably without any commitment to follow the rules of home occupation licenses. There is no substantial change in his attitude.

Second, Mr. Favatella continues to operate the business out of his home without a conditional use permit or home occupation business license, as evidenced by his letters of September 29 and October 26, 2008.

Third, Mr. Favatella continues to be in noncompliance with City ordinances and his written promises as stated in his signed letter of August 2, 2006. In that letter Mr. Favatella stated to Aric Jensen that he would “#2 Return the North drive way back to vegetation and remove and replace drive approach” and “#3 Once the new drive way on the south side of the house is paved a new approach will be poured.” More than two years later, none of these things have been done.

Fourth, Mr. Favatella continues to be in noncompliance with the requirements under the home occupation license ordinance. On June 2, 2008, Mr. Favatella, signed an application for a home occupation license, which stated in capital letters above his signature, “I certify that the information herein is true and correct and that I will abide by all of the conditions listed.” Those unmet conditions from Section 14-17-105 include the following:

- A. The use shall be clearly incidental and secondary to the use of the dwelling and shall not change the appearance, character, or condition thereof.
- B. It shall be conducted entirely within a dwelling, except for work performed offsite.
- H. It shall not involve the use of mechanical or electrical apparatus, equipment or tools not commonly associated with a residential use or as are customary to home crafts.
- J. It shall not involve the use or parking of equipment or motor vehicles having a gross weight of twelve thousand (12,000) pounds or more directly at the residence.

Fifth, Mr. Favatella continues to be in noncompliance with the conditions of approval imposed by the Administrative Committee on June 16, 2008. Those conditions included compliance with “the conditions recommended in the staff report, with all the conditions in the City Ordinance, and that he has 60 days to make all required improvements.”

Sixth, Mr. Favatella also continues to keep work equipment and vehicles on the premises of his house, including a goose neck flat bed trailer, an F550 flat bed truck, and a snowcat on his property, all of which were found to be commercial vehicles by the Council.

Seventh, the changes that Mr. Favatella has described in his letter relative to “a substantial change in circumstances” or “new evidence” occurring since the Council decision are not germane to the discussion at hand. The fact that he has installed a fence, planted trees, and obtained a permit to build a garage is immaterial. Planting trees and installing a fence does not legitimize the parking or storage of commercial vehicles on a residential property, and the Bountiful City Home Occupation provisions specifically state that a person cannot use a garage or storage building as part of a home occupation. So while these changes may enhance the appearance of the property, they are not related to an application for a conditional use permit to operate a home occupation.

Mr. Jensen concluded by saying that Staff recommends to deny Mr. Favatella’s request to reconsider a conditional use permit to operate a contracting business out of his home on the basis that there has not been a substantial change in the circumstances since the denial of the previous application, and the applicant has not provided sufficient new evidence since the denial of the previous application, and as indicated in the Staff Report of November 18, 2008.

Mike Favatella admitted that he has not had a Bountiful Business License for his business which he has conducted out of his home for the past four years. He did mention that he has a Utah State License for “Fav-Comm Inc.” Mr. Favatella reviewed the process he went through to obtain a conditional use permit which would allow him to get his Bountiful Business License. He continued to explain at length his health and financial situation and why he has not been able to comply with the conditions to obtain his business license. He explained that he has installed a fence, planted some trees and obtained a building permit for a garage. Mr. Favatella accused his neighbors and the Mayor for his situation.

There was a lengthy discussion among the Commission regarding the fact that Mr. Favatella has not obtained a Bountiful Business License for the last 4 years of his business, has not complied with the conditions given to him over 2 years ago, and has not complied with the current conditions for a business license. The Commission agreed that Mr. Favatella has not made any changes that would warrant a reconsideration of a conditional use application.

Michael Allen made a motion to deny the application for reconsideration of a conditional use permit based on the fact that there is no substantial change or evidence that would warrant reconsideration before the 1 year period. Barbara Holt seconded the motion and voting was unanimous in favor.

Mr. Mahan advised Mr. Favatella that if he complied with the items he promised to do two years ago and to comply with City ordinances by removing his business equipment and vehicles to another place, and agreed to abide by the conditions that go with a home occupation license, he

could re-apply and this may be considered by the Planning Commission to be a substantial change in circumstances.

As Mr. Favatella left the meeting, he stated that he is going to continue to conduct his business in violation of the ordinance.

Mr. Jensen found Mr. Favatella out of the meeting to inform him that he has ten days to appeal this decision to the City Council.

2. Consider final amended site plan approval for Colonial Square Area located at 500 W. 2600 S., Colonial Square Business association, applicants.

Sean Macklyn and Blaine Smith, representing Colonial Square Business Owners Association, were present. Aric Jensen explained that earlier this year the Colonial Square Business Owners Association received site plan approval for modifications to the common areas. At that time the Commission deferred approval of the signage plan as it was not ready for review. Mr. Sean Macklyn, representing Colonial Square, would now like to present their sign proposal.

Staff recommends discussing this item and then giving the applicants guidance as to what kind of sign plan is appropriate for this development and an opportunity to make revisions and come back before the Commission at a future date.

Sean Macklyn explained that Colonial Square is a large business complex and 12 of those businesses would like their name on the signs. Mr. Macklyn explained that a pole sign could be 35' tall, but the association feels that 35' is too large. They prefer to have one 25' pole sign near the main (middle) entrance on 2600 S. and one monument sign at the two remaining entrances on 2600 S. They are also proposing to have two marker signs, one at the corner of 2600 S. and another one at the entrance from 500 W.

There was a discussion on the number, and placement of the signs. The Commission agreed that Colonial Square needs some help and attractive signage would be a benefit to the City and the businesses.

Barbara Holt made a motion to continue this item until the next meeting. Tom Smith seconded the motion and voting was unanimous in favor.

3. PUBLIC HEARING - Consider approval of an amendment to Ordinance 2007-17, extending the deadline of one year, located at 1600 E. Skyline Dr., Randy Lewis, applicant.

Randy Lewis, applicant, was present. Aric Jensen explained that Mr. Lewis is requesting an amendment to Ordinance 2007-17, which would extend the ordinance deadlines an additional year.

On November 27, 2007, the Bountiful City Council approved Ordinance 2007-17, which rezoned a parcel of land located at 1600 E. Skyline Drive from R-F (Residential Single family Foothill) to R-3 (Residential Single Family). The provisions of Section 4 of that Ordinance states:

Section 4. *In the event that the property owner does not receive final subdivision plat approval upon this property within one calendar year from the date of this approval, or does not record a subdivision plat within two years from the date of this approval, this land shall automatically revert to its prior zoning designation of R-F (Residential-Foothill).*

Staff has reviewed the applicant's request and conducted a review of new development in the area, and a more thorough review of all adopted and/or anticipated changes to City Ordinance since the time of original approval. As a result, Staff could find no new development in the general vicinity of the subject property that would have bearing on this issue, and could find no changes to the City Code that would have any bearing on this issue. Staff reiterates the Council's previous support for this item in its recommendation to grant a one year extension as requested by the applicant.

Staff recommends that the Council amend the provisions of Section 4 of Ordinance 2007-17, to state that if the property owner doesn't receive plat approval within *two* calendars years from original approval, or doesn't record the final plat within *three* calendar years, then the property reverts to the R-F zone designation.

The public hearing was opened for all those with comments and concerns.

Chris Grant, residing at 321 W. 2900 S., submitted drawings illustrating how the shooting range could impact any proposed building lots. There should be consideration for the new home owners safety with the gun club. Law suits could be filed and then the gun club could be closed. The concern is that the integrity of the gun club be maintained and not compromised by further development.

Lynn Barnett, residing at 1244 Northridge Dr., has the same concerns as last year when the rezone was granted. Some of his concerns are with the poor planning from the City such as the pipeline and the street built adjacent to the pipeline with the house on the east side of it, Skyline Drive is bad and dangerous, the "B" is a problem creating safety concerns for the residents, and the motorcycle hill is creating unlawful activities. His current concern is that nothing has been done with the property this past year. The approval was for one year and if nothing was done it would revert back to the previous zone. Mr. Barnett is against the proposed extension.

Mr. Mahan asked Mr. Lewis why the subdivision had not been submitted within the year deadline.

Mr. Lewis stated that shortly after this was approved the economy took a nose dive. The engineering was not completed primarily because of the expense issue.

Marty Ehman, residing at 1493 Skyline Dr., was present at the meeting last year when the Planning Commission denied the proposal. After the denial the City Council approved the rezone without any explanation.

Mr. Jenkins explained that the Planning Commission can give only a recommendation to the City Council and then the City Council makes the final decision. Before a final decision is made, the City Council reviews the minutes from the Planning Commission and reviews all information concerning the proposal.

Mr. Mahan also explained that the City Council values the Planning Commission recommendations and most of the time they follow that recommendation. There is no disrespect intended to the Planning Commission but the City Council sometimes has different opinions on some issues.

Dave Peterson, residing at 785 Eagleridge Dr., had concerns with the removal of the cement barriers at the base of the "B." The law is being broken every day in this area and the residents are concerned. Mr. Peterson was told that this is not the issue being addressed. If they have such concerns, they need to meet with the City Manager and/or the Mayor.

Mr. Lewis noted that the City Council looked at the long term plan for the City and the cost and benefits the road would bring to the City. Developing this property and the road will enhance the fire suppression, water drainage, and the general neighborhood.

Marilyn Davies, residing at 1473 Skyline Dr., had concerns with the gun club. The residents need protection from the stray bullets being fired from the gun club.

The public hearing was closed without further comments.

Michael Allen made a motion to recommend to the City Council denial for an extension to the deadline of one year. Ray Keller seconded the motion and voting past by majority vote. Chairman Clark Jenkins, Vice Chairman Tom Smith, Dave Badham, Michael Allen, and Ray Keller voting "aye." Barbara Holt voting "nay."

Meeting adjourned at 9:00 p.m.